

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO SHADWICK,

Defendant-Appellant.

UNPUBLISHED

June 17, 2004

No. 245620

Wayne Circuit Court

LC No. 00-011781-02

Before: Neff, P.J., and Zahra and Murray, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), possession of marijuana, MCL 333.7403(2)(d), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of six months to twenty years for the cocaine conviction and six to twelve months for the marijuana conviction, to be preceded by a two-year consecutive term for the felony-firearm conviction. Defendant appeals as of right, challenging only his felony-firearm conviction. We affirm.

Defendant argues that the trial court erred in its factual findings in convicting him of the felony-firearm charge and similarly that there was insufficient evidence to support the felony-firearm conviction. We disagree.

In determining whether there is sufficient evidence to support a conviction, we view the evidence in a light most favorable to the prosecution and decide whether any rational factfinder could have found the essential elements of the crime were proven beyond a reasonable doubt. *People v Shipley*, 256 Mich App 367, 374-375; 662 NW2d 856 (2003). We review a trial court's factual findings for clear error. *People v Hardrick*, 258 Mich App 238, 246; 671 NW2d 548 (2003).

To be guilty of felony-firearm, a person must carry or have in the person's possession a firearm when that person is committing or attempting to commit the underlying predicate felony. *Shipley, supra*, 256 Mich App at 376. Possession of a firearm can be either actual or constructive, but requires proximity and reasonable accessibility. *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000). Defendant claims he could not be found guilty of felony-firearm because he was outside the house when he was arrested and did not have a key to the house at that point. However, as the Michigan Supreme Court pointed out in *Burgenmeyer*,

supra, at 438-439, a person need not possess a firearm at the time the person is *arrested* to violate the felony-firearm statute. Rather, the person need only possess a firearm at the time the person committed the predicate felony. In *Burgenmeyer*, our Supreme Court found sufficient evidence to support a felony-firearm conviction predicated on a drug possession felony where cocaine was found in a dresser drawer in the defendant's bedroom and firearms were on top of the dresser, stating that "[t]he drugs and the weapons were close enough that a jury reasonably could conclude that the defendant possessed both at the same time." *Id.* at 439-440. While defendant indicates that this case differs from *Burgenmeyer* in that the drugs and guns in the present case were not found in his bedroom, that factual difference is of little importance. Rather, the important similarity is that there was evidence to reasonably support a finding that defendant simultaneously possessed the cocaine and at least one firearm. From the trial testimony regarding defendant's conduct during an officer's surveillance of the scene and the location of crack cocaine in the house, a factfinder could reasonably have determined that defendant took money from people who wished to buy cocaine and then went into the house and retrieved cocaine for the drug purchasers from the supply of cocaine on the living room table. This would reflect possession of the cocaine by defendant. Given the testimony indicating that the cocaine and the loaded firearms were on the same table, a factfinder could reasonably have determined that the items were in proximity and that defendant had ready access to the firearms contemporaneous with his possession of the cocaine. Further, a factfinder could reasonably have inferred that it was contemplated by defendant, and possibly others involved with the drug dealing at the vacant house, that he could use the firearms to protect himself and the drug supply. Thus, there was sufficient evidence to support defendant's felony-firearm conviction.

In its findings of fact, which were presented orally at the conclusion of trial, the trial court referred to the cocaine possession as "a continuing event" and stated that defendant "clearly had access to a firearm during the course of the committing of the crime of delivering cocaine." This reflects that the court understood that a felony-firearm conviction may properly be based on a defendant possessing a firearm to which the defendant has access at the same time that the defendant is committing a felony drug possession crime. Given the circumstances in which the cocaine was found, the trial court did not clearly err, *Hardrick, supra*, in finding defendant guilty of felony-firearm. Rather, this finding was supported by the evidence in the case, particularly the proximity of the firearms and the cocaine.

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray